

FILED  
Court of Appeals  
Division II  
State of Washington  
2/5/2018 4:13 PM  
No. 50739-1-II

**Court of Appeals, Div. II,  
of the State of Washington**

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State of Washington,

Respondent,

v.

William Best,

Appellant.

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**Brief of Appellant**

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## **1. Introduction**

William Best threw a cigarette butt out of the door of his van while it was parked next to a landscape strip in a Wal-Mart parking lot. Officers found a bag of methamphetamine on the landscape strip and arrested Best for possession. The officers never observed the bag in Best's possession or leaving his possession. Any connection between Best and the drugs was pure speculation. The evidence was insufficient to prove possession beyond a reasonable doubt. This Court should reverse the conviction and dismiss the charge.

## **2. Assignments of Error**

### **Assignments of Error**

1. Best's conviction on Count I, possession of methamphetamine, was based on insufficient evidence.

### **Issues Pertaining to Assignments of Error**

1. The State bore the burden of proving beyond a reasonable doubt that Best actually or constructively possessed the drugs. There was no testimony at trial locating the drugs in Best's possession or control or leaving his possession or control. Was his conviction based on insufficient evidence? (assignment of error 1)

### **3. Statement of the Case**

#### **3.1 From the opposite side of the van, officers saw a shadow of a hand making a throwing motion, but did not see what was thrown or who threw it.**

William Best was homeless, living in his van. *See* RP 86.<sup>1</sup> He and his girlfriend had been staying for a few days in the Wal-Mart parking lot in Longview. RP 31, 86. Longview police officers Mortensen and Langlois saw the van one evening and recognized it had been there the day before. RP 31. The windows were fogged up (perhaps from the couple's earlier activities). RP 31, 45, *see* 87. The officers decided to make contact. RP 31.

The van was parked in a stall at the far end of the parking lot, next to a landscape island with shrubs and beauty bark. RP 32. The driver's side was next to the island, the passenger side facing the Wal-Mart. RP 32-33.

The officers approached the van on foot from the passenger side. RP 33, 45. With the sun shining from behind the van, the officers saw shadows through the windows. RP 45-46. They saw the driver's side sliding door open slightly. *Id.* They

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<sup>1</sup> The Verbatim Report of Proceedings was filed in two, unnumbered volumes. The first volume, dated March 21, 2017, reports the one-day trial in this matter, and will be referred to simply as "RP." The second volume reports a number of short hearings on multiple dates, including the sentencing hearing on June 19, 2017, and will be referred to by date, *e.g.*, "RP, Jun 19, 2017, at 27."

saw the shadow of a hand making a throwing motion. *Id.* They saw that the door slid closed. *Id.*

### **3.2 Walking around the car, officers discovered a bag of drugs on the nearby landscape strip, but Best did not know what it was.**

Officer Langlois went around the front of the van to the driver's side. RP 33, 46. A wadded-up plastic bag sitting on a shrub on the planting strip immediately came to his attention. RP 47. He picked it up, opened it, and found a small chunk of crystal that was later confirmed to be methamphetamine. RP 34, 47, 59, 68.

The officers contacted Best. RP 87. They showed him the bag and asked if he knew what it was. RP 93. Best said he did not. *Id.* The officers arrested him for possession. RP 87, 93.

At trial, Best testified that before the officers arrived, he had gone to the store for some cigarettes and other items. RP 87. When he returned to the van, the couple had sex. *Id.* Afterward, Best finished a cigarette and threw it out the sliding door. RP 87-88, 93.

### **3.3 Officers did not obtain any other evidence to support their conclusion that the drugs belonged to Best.**

Officer Langlois admitted that he probably would have found a cigarette butt close by if he had been looking for one.

RP 53. A cigarette butt would not have drawn his attention the way the plastic bag had. RP 53-54.

The officers did not obtain any security footage from the Wal-Mart to get a better view of what Best threw out the door of the van. RP 35-36, 52. The officers testified that the bag “more than likely” would have had fingerprints or DNA from the person who handled it. RP 37. But they did not have the bag tested for fingerprints or DNA. RP 36, 53.

### **3.4 Best was tried and convicted of possession of methamphetamine.**

Prior to trial, Best moved for a change of venue. RP 4. He argued that he could not have a fair trial because there were no black, homeless, or poor people in the prospective jury pool. RP 4-5. The trial court denied the motion because the jury pool had been drawn randomly from the citizens of the county. RP 5.

The jury found Best guilty of possession and two counts of bail jumping. CP 51-53; RP 3-5. Best was sentenced to 70 days imprisonment with 12 months of community custody. RP 27.

## **4. Argument**

### **4.1 A challenge to sufficiency of the evidence is reviewed de novo.**

Due process requires the State to prove every element of a crime beyond a reasonable doubt. *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). Whether the evidence presented at

trial was sufficient to meet the State's burden is a question of constitutional magnitude that may be raised for the first time on appeal. *City of Seattle v. Slack*, 113 Wn.2d 850, 859, 784 P.2d 494 (1989). This Court reviews a challenge to the sufficiency of the evidence de novo. *Rich*, 184 Wn.2d at 903.

#### **4.2 The State bears the burden of presenting sufficient evidence to prove every element of the crime beyond a reasonable doubt.**

To determine whether the evidence was sufficient to support a conviction, the Court considers whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Rich*, 184 Wn.2d at 903. By incorporating the State's burden of proof beyond a reasonable doubt, the sufficiency of the evidence standard is more exacting than a simple "substantial evidence" analysis. *State v. Vasquez*, 178 Wn.2d 1, 6, 209 P.3d 318 (2013). Although the Court is to draw inferences from the evidence in favor of the State, those inferences must be reasonable, and cannot be based on speculation. *Rich*, 184 Wn.2d at 903.

If the evidence is insufficient to prove an element beyond a reasonable doubt, the conviction must be reversed and the case dismissed with prejudice. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998).



#### **4.3 The State's evidence was insufficient to prove possession beyond a reasonable doubt.**

Possession of a controlled substance may be actual or constructive. *State v. George*, 146 Wn. App. 906, 919, 193 P.3d 693 (2008). Actual possession requires physical custody of the controlled substance. *Id.* Constructive possession means having dominion and control over either the drugs or the premises on which the drugs were found. *Id.* In either case, the custody or control must be actual control, not merely a momentary handling. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Mere proximity to drugs is insufficient to prove constructive possession. *George*, 146 Wn. App. at 920.

Here, there was no evidence that Best actually or constructively possessed the bag of methamphetamine that was found in the planting strip by Officer Langlois. The officers never observed the bag in Best's actual possession. All they saw was a shadow of a hand making a throwing motion. They did not see whose hand it was. They did not see what, if anything, was thrown. They did not see the bag travel through the air or land on the ground. There was no video evidence to show what was thrown or who threw it.

Best testified that he threw a cigarette. Officer Langlois admitted that there were probably cigarette butts on the ground near the van, but he did not notice them because he was fixated

on the bag of suspected drugs. When the officers asked Best if he knew what the bag was, he said he did not. Best never stated that the bag belonged to him. The bag was not tested for fingerprints or DNA.

There was simply no evidence connecting Best to the drugs. There was no evidence that Best actually possessed the bag before it was found on the ground outside the van. Any inference that he actually possessed the bag is pure speculation. It is just as likely that Best's girlfriend had actual possession or that the bag had been left on the ground by someone else entirely. There is no rational basis upon which to conclude that the drugs were actually possessed by Best **beyond a reasonable doubt**.

The evidence is also insufficient to prove constructive possession. The drugs were found on the Wal-Mart parking lot. Best did not have dominion and control over Wal-Mart's premises. There is no evidence that the bag of drugs was ever in Best's van. Any inference that the bag was in the van at any time is not reasonable—it is pure speculation.

## **5. Conclusion**

Conviction of a crime beyond a reasonable doubt cannot be based on speculation. There was no evidence that the bag of drugs was ever in Best's hand or in his van. Any inference that

Best actually or constructively possessed the drugs is unreasonable and based on speculation. Best's conviction of possession was not supported by substantial evidence. This Court should reverse the conviction and dismiss the charge.

Respectfully submitted this 5<sup>th</sup> day of February, 2018.

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## **Certificate of Service**

I certify, under penalty of perjury under the laws of the State of Washington, that on February 5, 2018, I caused the foregoing document to be filed with the Court and served on Counsel listed below by way of the Washington State Appellate Courts' Portal.

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I certify, under penalty of perjury under the laws of the State of Washington, that on February 5, 2018, I served the Brief of Appellant and a copy of RAP 10.10 on the Appellant, William David Best, by depositing a copy in the U.S. mail, postage paid, to the following address:

William David Best  
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DATED this 5<sup>th</sup> day of February, 2018.

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February 05, 2018 - 4:13 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50739-1  
**Appellate Court Case Title:** State of Washington, Respondent v William David Best, Sr., Appellant  
**Superior Court Case Number:** 16-1-00508-7

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